IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CORESTATES LEASING INC. f/k/a MERIDIAN LEASING INC., Plaintiff,	:	CIVIL ACTION
v.	:	
RICK K. HOUSEWRIGHT, D.C., ind. & d/b/a LONE STAR CHIROPRACTIC CLINIC, and LORI HOUSEWRIGHT, Defendants.	:	No. 96-8678

M E M O R A N D U M

Padova, J. March , 1998

In this action for breach of contract, Plaintiff CoreStates Leasing, Inc., ("CoreStates") has moved for summary judgment. Because no genuine issues of material fact exist with respect to Plaintiff's claim that it was a holder in due course, the Court will grant Plaintiff's Motion.

I. BACKGROUND[1]

Defendant Rick K. Housewright, D.C. ("Housewright") is a chiropractor who has practiced in Texas since approximately September, 1988. (Pl.'s Mot. Summ. J. Ex. A, Housewright Dep. of 7/22/97 ("RH Dep.") at 7.) Since approximately December, 1992,

[1] Where the parties have contested the facts set forth below, the court has accepted Defendants' version for purposes of the court's summary judgment analysis. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255, 106 S. Ct. 2505, 2513.

Housewright has been the sole proprietor of the Lone Star Chiropractic Clinic ("Lone Star"). (RH Dep. at 8.)

In approximately October, 1995, one of Housewright's friends, Dr. David Singer ("Singer"), and Singer's receptionist, Kim LaBelle, informed Housewright of a piece of chiropractic equipment called a Vertebral Axial Decompression Table ("VAX-D"). (RH Dep. at 9-10.) Shortly thereafter, Housewright visited a chiropractic clinic in Florida where he received a treatment using a VAX-D and discussed what conditions benefitted from its use. (RH Dep. at 10-11.) He was immediately interested in the VAX-D. (RH Dep. at 11.) Sometime later, but also in approximately October, 1995, Housewright further discussed the VAX-D with Singer in Dallas at a seminar that Singer was conducting. (RH Dep. at 11.) After returning from the seminar, Housewright decided the VAX-D would help his patients and began to investigate acquiring one.[2] (RH Dep. at 10, 12.) The National Spine Institute ("NSI") was the apparent supplier/distributor of the VAX-D. (Pl.'s Br. Supp. Mot. Summ. J. ("Pl.'s Br.") at 11.) It contacted Housewright during this

[2]Housewright's recollection of the sequence and timing of events, and the persons with whom he discussed certain aspects of the VAX-D, is at times uncertain. For example, Housewright's counsel notes that his client "didn't know who contacted him first [about buying the VAX-D]. . . . [H]e said he didn't know the sequence [of events]." (RH Dep. at 35.) Where Housewright has provided different accounts of the facts, the Court has extracted the version most favorable to his position.

time period, apparently hearing of him from Singer. (RH Dep. at 13.)

It is also at around this time that Housewright first encountered Steven Roemer ("Roemer"), who was the agent of Lear Financial Corporation ("Lear"). (Id.) Roemer contacted Housewright after Singer recommended that Housewright purchase a VAX-D. (RH Dep. at 13-14, 22-23.) Roemer made several attempts to convince Housewright to purchase or lease the VAX-D, but Housewright declined because he could not afford it. (RH Dep. at 13-14.) Housewright expressed concern about the required initial payment of approximately $10,000 and worried that he would not be able to afford the proposed monthly lease payments of over $2,000. (Id.) To allay Housewright's concern regarding the monthly lease payments, Roemer assured Housewright that insurance companies would reimburse him for the cost of VAX-D treatments, and that such reimbursements would cover the monthly lease payments. (Id. at 41-42.) Roemer further claimed that, because of the insurance reimbursements, other doctors using the VAX-D were earning a significant profit. (Id.) Singer made similar representations to Housewright about insurance reimbursements for VAX-D treatments.[3] (Housewright Ans. to Interrogs. ("RH Ans.") ¶

[3] It appears that without insurance reimbursements, few patients could pay for the high cost of VAX-D treatments. (See (RH Dep. at 21.) Therefore, without insurance reimbursements, the VAX-D would not generate enough business to cover the monthly lease payments, and certainly would not earn a profit.

21.) With respect to the initial payment, Roemer persuaded Singer to loan Housewright the money.[4] (RH Dep. at 14.)

Housewright believed Roemer's and Singer's assertions regarding insurance reimbursements, and did not take any independent steps to confirm their accuracy. (RH Ans. ¶ 25; RH Dep. at 49.) Relying on these assertions, Housewright agreed to lease the VAX-D from Lear. (RH Ans. ¶ 23.) In addition, Housewright told his wife, Defendant Lori Housewright, about Roemer's assertions regarding insurance reimbursements. (Defs' Mot. Reconsid. Ex. B, Aff. of Lori Housewright ("LH Aff.") ¶ 2; Defs' Mot. Reconsid. Ex. B, Aff. of Rick K. Housewright ("RH Aff.") ¶ 5.) Mrs. Housewright also relied on Roemer's assertions and agreed to be co-guarantor, along with her husband, of his lease obligations. (LH Aff. ¶ 3; RH Aff. ¶ 5.)

On December 13, 1995, after agreeing to lease the VAX-D, but before the execution of the lease on December 15, 1995, Housewright received a facsimile letter from Plaintiff (then known as "Meridian Leasing Inc.") on Plaintiff's letterhead, stating the following:

> We are pleased to inform you that Meridian Leasing, Inc. has taken assignment of your lease, and in order to induce us to accept an assignment of all Lessor's right, title, and interest in the Lease, but none of Lessor's obligations with respect thereto, you confirm to us the following:

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[4] Housewright paid Singer back at an unspecified later date. (RH Dep. at 14.)

> . . .
> 2. As of today, the following lease schedule will apply: . . . Upon expiration of the lease all of the equipment may be purchased for the Fair Market Value.

(Pl.'s Mot. Summ. J. Ex. E.) Housewright signed the letter and faxed it back to Plaintiff on the same day. (RH Dep. at 39, statement of Pl.'s counsel: "[The letter] was sent to Dr. Housewright on December 13th, and Dr. Housewright faxed it back to my client on December 13th of 1995.")

Between December 13 and 15, 1995, Roemer continued to assure Housewright that insurance reimbursements for VAX-D treatments would cover the monthly lease payments. (RH Aff. ¶ 3.) Roemer also faxed to Housewright a copy of the proposed VAX-D lease between Housewright and Lear (RH Ans. ¶ 28), which was clearly marked with Lear's name. (Pl.'s Mot. Summ. J. Ex. A2, Lease Agreement ("Lease).)[5]

Roemer told Housewright that the proposed lease was a "standard lease." (RH Dep. at 48.) Because Housewright relied on this statement and on Roemer's and Singer's assurances regarding insurance reimbursements, he did not read the lease, leaving the task to his Office Manager at the time, Neal Garcia ("Garcia"). (RH Ans. ¶ 24.) For the same reason, Housewright did not consult a lawyer regarding the proposed VAX-D lease,

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[5]Plaintiff's exhibits are lettered, in succession, "A, B, A, B, C, D, E." The Court has labeled the second A and B exhibits "A2 and B2."

although he had enough time to do so. (RH Ans. ¶ 25; RH Dep. at 48.)

On December 15, 1997, Housewright executed the VAX-D lease, and he and his wife executed a guaranty of Housewright's obligations under the VAX-D lease.[6] (Lease; Cert. of Franklin Souder in Supp. Pl.'s Mot. Summ. J. Ex. B ("FS Cert.") ¶ 3; Pl.'s Mot. Summ. J. Ex. B2., Guaranty.) After countersigning the VAX-D lease and guaranty, Lear bought the VAX-D from the vendor. (FS Cert. ¶ 5.) Effective December 15, 1997, Lear made a non-recourse assignment of its interest in the VAX-D lease and guaranty to Plaintiff. (Pl.'s Mot. Summ. J. Ex. D.) Although Housewright claims that delivery of the VAX-D took place sometime in January, 1996 (RH Dep. at 17), he executed a certificate indicating delivery and acceptance on December 15, 1995. (Pl.'s Mot. Summ. J. Ex. C.) In addition, the letter from Meridian that Housewright signed on December 13, 1995, stated that the leased equipment "has been installed and accepted by you and is in good operating order and condition." (Id. Ex. E.)

[6] The term of the VAX-D lease, as modified by the December 13 letter from Plaintiff, was 63 months. The lease required payments in accordance with the following schedule: $500 (plus applicable tax) each month for the first three months, followed by $2,310 (plus applicable tax) each month for the following sixty months. Upon executing the lease, Housewright made a payment representing the final lease payment.

Housewright started treating patients with the VAX-D, and got positive results.[7] (RH Dep. at 15-16, 21.) He also sought insurance reimbursements for the cost of VAX-D treatments, submitting claims under a billing code that Singer, Roemer, and Dr. Allen Dryer ("Dryer") had recommended.[8] (RH Dep. at 15-16.) The insurance companies, however, refused to reimburse Housewright for the cost of VAX-D treatments. (RH Dep. at 15-16.) They wrote to Housewright explaining that he had impermissibly listed VAX-D treatments under a billing code meant for surgical procedures that Texas chiropractors, including Housewright, could not perform. (RH Dep. at 15-16; RH Ans. ¶21.)

In several subsequent attempts to receive insurance reimbursements, Housewright gave the insurance companies additional information about the VAX-D and resubmitted claims under three or four other billing codes, but each time he was unsuccessful. (RH Dep. at 50-52.) Housewright also consulted Roemer, Singer, and the NSI regarding his inability to get

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[7] As of July, 1997, Housewright had treated twenty-five patients with the VAX-D, twenty-three of whom were treated in 1996. (RH Dep. at 19, 49.)

[8] Dryer developed the VAX-D. (RH Dep. at 23.) In approximately March, 1996, he conducted a full-day seminar at Lone Star, during which he instructed the entire staff in the proper use of the VAX-D and provided information concerning billing procedures, which presumably included billing codes. (RH Dep. at 23-24.) In 1996, after the National Spine Institute had discontinued their services, Dryer's new company sent Housewright some correspondence regarding billing codes. (RH Dep. at 26-29.)

reimbursements. (RH Dep. at 15-16; 26-29.) Housewright vaguely recollects that Roemer may have given him the names of other chiropractors who were experiencing similar VAX-D-related reimbursement problems. (RH Dep. at 27.)

Despite the difficulty that Housewright had in getting insurance reimbursements, there were clinics that were being reimbursed for VAX-D treatments. (RH Dep. at 50-52.) Housewright learned that at these clinics, insurance claims relating to the VAX-D were made through a staff member who had an M.D. Presumably M.D.s were able to use the surgical billing code that Housewright had tried to use previously, without success. (Id.) Given that neither Housewright nor anyone else at Lone Star had an M.D., Housewright and Garcia considered hiring someone with an M.D. to work at Lone Star, but in mid-1996, they decided against it for unspecified reasons. (Id.) Housewright never received any reimbursements for VAX-D treatments. (Id. at 50-51.)

Housewright's lease payments to Plaintiff with respect to the VAX-D lease ran consistently in arrears. (Pl.'s Br. at 2.) When he failed to make the monthly lease payment that was due on November 14, 1996, Plaintiff treated the event as a default under the VAX-D lease. (Id.) Plaintiff then accelerated the remaining payments due under the lease, and demanded full payment of the outstanding balance. (Id.) Defendants refused to

pay. (Id.) Therefore, on December 30, 1996, Plaintiff filed this action for breach of contract, seeking damages, costs, and attorney's fees.

Another chiropractor, George H. Pastor ("Pastor"), had experienced similar problems with insurance reimbursement. In December, 1994, a year before Housewright leased his VAX-D table, Pastor had entered into a similar lease with Lear Financial Corporation "based upon the representations of Steven Roemer that my patients' insurance companies would routinely reimburse me for therapy given to patients utilizing the VAX-D Table." (Defs' Mot. Reconsid. Ex. B, Pastor Aff. ("Pastor Aff.) at ¶¶ 3, 4, 7.) Pastor's lease was also assigned to Meridian. (Id. at ¶ 4.) When Pastor found that the insurance companies would not reimburse him, he immediately contacted Roemer, "who indicated that other chiropractors were facing the same problems." Roemer suggested alternative billing codes and "recommended hiring a licensed medical doctor to sign the insurance claim forms." (Id. at ¶ 7.) Finally, after continual rejection by insurers for a period of nine months, the National Spine Institute agreed to accept the return of the VAX-D and assume Pastor's debt obligation to Meridian. (Id. at ¶ 8.) Roemer was "intimately involved" in the return of the VAX-D table and he was aware that it was necessary because insurers were not reimbursing Pastor for

his treatments with the VAX-D.[9] (Id. at ¶ 9.) Pastor stated that, throughout his dealings with Roemer and Lear, "I believed they acted as the agent for Meridian CoreStates because CoreStates always directed me to Mr. Roemer when I had questions regarding my lease and/or equipment." (Id. at ¶ 12.)

Defendants claim that Roemer fraudulently induced them to enter into the VAX-D lease and guaranty. They assert that Roemer assured Housewright that Housewright would receive insurance reimbursements when Roemer knew, but did not disclose, that Housewright could get reimbursement only for claims made through an M.D. Defendants further contend that, at the time he perpetrated the alleged fraud, Roemer was acting as Plaintiff's agent. Their position is that the VAX-D lease and guaranty are void, invalid, or otherwise unenforceable because Plaintiff, through its agent Roemer, fraudulently induced Defendants to enter into the VAX-D lease and guaranty. Defendants seek rescission of the VAX-D lease and guaranty, in addition to damages, costs, and attorney's fees.

II. DISCUSSION

A. Legal Standard

[9]Pastor stated that, a year later, the National Spine Institute stopped covering Pastor's lease payments, and CoreStates declared him in default and initiated litigation. (Pastor Aff. at ¶ 10.)

Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed.R.Civ.P. 56(c). An issue is "genuine" if there is sufficient evidence with which a reasonable jury could find for the non-moving party. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248, 106 S. Ct. 2505, 2510 (1986). A factual dispute is "material" if it might affect the outcome of the case. Id.

A party seeking summary judgment always bears the initial responsibility of informing the district court of the basis for its motion and identifying those portions of the record that it believes demonstrate the absence of a genuine issue of material fact. Celotex Corp. v. Catrett, 477 U.S. 317, 322, 106 S. Ct. 2548, 2552 (1986). Where the non-moving party bears the burden of proof on a particular issue at trial, the movant's initial Celotex burden can be met simply by "pointing out to the district court that there is an absence of evidence to support the non-moving party's case." Id. at 325, 106 S. Ct. at 2554. After the moving party has met its initial burden, “the adverse party’s response . . . must set forth specific facts showing that there is a genuine issue for trial.” Fed.R.Civ.P. 56(e). That is, summary judgment is appropriate if the non-moving party

fails to rebut by making a factual showing "sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." Celotex Corp. v. Catrett, 477 U.S. at 322, 106 S. Ct. at 2552. Under Rule 56, the Court must view the evidence presented on the motion in the light most favorable to the opposing party. Anderson v. Liberty Lobby, Inc., 477 U.S. at 255, 106 S. Ct. at 2513 ("The evidence of the non-movant is to be believed, and all justifiable inferences are to be drawn in his favor.").

B. Fraud in the Inducement, the Integration Clause and the Parol Evidence Rule

Plaintiff, as assignee of the lease agreement, is suing Defendants for breach of contract. Defendants claim that the lease agreement and guarantee are void because Defendants were induced to sign them by fraud. The Pennsylvania Superior Court has described a claim of "fraud in the inducement" as being

> where the party proffering evidence of additional prior representations does not contend that the parties agreed that the additional representations would be in the written agreement, but rather claims that the representations were fraudulently made and that but for them, he or she never would have entered into the agreement.

1726 Cherry Street Partnership v. Bell Atlantic Properties, Inc., 653 A.2d 663, 666 (Pa. Super. Ct. 1995).

Plaintiff argues that even if misrepresentations were made to Housewright, a specific integration clause in the lease precludes evidence of prior negotiations or representations regarding the lease under the parol evidence rule. The clause states:

> NO ORAL AGREEMENT, GUARANTEE, PROMISE, CONDITION, REPRESENTATION OR WARRANTY OR ANY ORAL MODIFICATION HEREOF SHALL BE BINDING. All prior conversations, agreements or representations above referred to are integrated herein. None of the terms of this lease shall be changed or modified except in writing executed by Lessor and Lessee.

(Lease first (unnumbered) ¶.)

The question here is whether, under Pennsylvania law, fraud in the inducement makes any contract voidable, including one with an integration clause, or whether a contract, and especially one with an integration clause, precludes evidence of all prior negotiations, even fraudulent ones. The Pennsylvania Supreme Court cases on this issue are difficult to reconcile. The Third Circuit has documented this confusing state of the law in Betz Laboratories, Inc. v. Hines, 647 F.2d 402 (3d Cir. 1981). It reviewed the two seemingly contradictory lines of cases before reaching its conclusion.

One line of cases relies on Bardwell v. Willis Co., 100 A.2d 102 (Pa. 1953), which Plaintiff cites to support the position that evidence of fraudulent misrepresentations is precluded by an integration clause. In Bardwell, the plaintiffs

allegedly relied on the defendant's false representations that a property met the plaintiffs' requirements for a bottling plant. In affirming a ruling for the plaintiffs, the Pennsylvania Supreme Court stated:

> There is not the slightest doubt that if plaintiffs had merely averred the falsity of the alleged oral representations, parol evidence thereof would have been inadmissible. Does the fact that plaintiffs further averred that these oral representations were fraudulently made without averring that they were fraudulently or by accident or mistake omitted from the subsequent complete written contract suffice to make the testimony admissible? The answer to this question is 'no'; if it were otherwise the parol evidence rule would become a mockery, because all a party to a written contract would have to do to avoid, modify or nullify it would be to aver (and prove) that the false representations were fraudulently made.

Id. at 507; see also Nicollella v. Palmer, 248 A.2d 20 (Pa. 1968)(owner who assured contractor that no substantial changes in the specifications had been made before construction contract was signed could not introduce parol evidence that integrated agreement contained substantial changes); 1726 Cherry St. Partnership, 653 A.2d at 664 (parol evidence could not be introduced to vary terms of integrated agreement where “alleged misrepresentations concern[ed] a subject specifically dealt with in the agreements”); Iron Worker's Sav. & Loan Ass'n v. IWS, Inc., 622 A.2d 367 (Pa. Super. Ct. 1993)(promissory note could be enforced against debtor despite his allegation that creditor had fraudulently assured him that the written terms of the note would

not be enforced); Bowman v. Meadow Ridge, 615 A.2d 755 (Pa. Super. Ct. 1992) (where contract for sale of property contained both integration clause and disclaimer of reliance on representations and where falsity of representation was readily ascertainable, parol evidence of fraudulent misrepresentations was not admissible); McGuire v. Schneider, Inc., 534 A.2d 115 (Pa. Super. Ct. 1987)(evidence of previous employment agreement inadmissible where later agreement with different terms contained integration clause). The Bardwell court advised the parties to put into writing any representations on which they relied:

> What is the use of inserting such [integration] clauses in agreements if one of the parties thereto is permitted to prove by oral testimony that he didn't examine and wasn't familiar with the premises or their condition, or that they would not meet the standards which plaintiffs require? . . . If plaintiffs relied on any understanding, promises, representations or agreements made prior to the execution of the written contract or lease, they should have protected themselves by incorporating in the written agreement the promises or representations upon which they now rely, and they should have omitted the provisions which they now desire to repudiate and nullify.

Bardwell, 100 A.2d at 105. Far from taking steps to assure that the lease agreement protected his interests, Housewright admits that he did not even read the lease before signing it.

The other line of Pennsylvania cases seems to conflict with Bardwell and allows evidence of fraudulent misrepresentation in the inducement to be introduced to invalidate a contract. In

an early case, Feuerstein v. New Century Realty Co., 156 A. 110 (Pa. 1931), the Pennsylvania Supreme Court stated:

> It is always competent to aver and prove that an engagement in writing was induced by fraudulent oral representations of material facts that affect the consideration. The purpose in such case is not to alter or vary the terms of the writing by parol evidence but to strike the writing down, just as though it had never been in existence, or to strike down such part of it as it dependent on the fraud, if the balance of the contract can be sustained as enforceable.

Id. at 111. In Berger v. Pittsburgh Auto Equipment Co., 127 A.2d 334 (Pa. 1956), decided after Bardwell, the Pennsylvania Supreme Court allowed a tenant to open a confessed judgment against him and rescind a lease based on the owner's misrepresentations about the strength of the floor, on which the owner knew the tenant planned to place heavy equipment. The court pointed out that the defect was not readily ascertainable by the tenant, who was not an expert engineer, and stated that the landlord's argument that verbal agreements were merged in and superseded by a subsequent written contract was

> a total misconception of what is involved in defendant's petition to open the judgment. What the petition alleges is that plaintiff made, not a contractual promise or agreement which should have been contained in the written lease and therefore could not be added to it by oral testimony, but a statement of an existing fact as to the strength of the floor for storage purposes. . . . A misrepresentation of a material fact, even though innocently made, if relied upon by the other party as intended that it would be, confers upon the latter the right to rescind the contract when the falsity of the representation is discovered. The purpose of the evidence here presented by defendant was not to alter or vary the terms of the

> written instrument, but to rescind it in its entirely because of the alleged factual misrepresentation which induced defendant to enter into it.

Id. at 335-36 (citation omitted); see also Mancini v. Morrow, 458 A.2d 580 (Pa. Super. Ct. 1983) (integration clause in sales contract did not preclude evidence of fraudulent concealment of water damage in basement); National Building Leasing, Inc. v. Byler, 381 A.2d 963 (Pa. Super. Ct. 1977)(integration clause in sales agreement would not bar evidence that seller fraudulently concealed existence of debris-fill hole, knowing it made the property unsuitable for intended use); Glanski v. Ervine, 409 A.2d 425 (Pa. Superior Ct. 1979)(judgment upheld allowing recision of contract for sale of property "as is" where vendor fraudulently concealed extensive termite damage); Silverman v. Bell Savings & Loan Ass'n, 533 A.2d 110 (Pa. Super. Ct. 1987)(rescission of contract allowed where seller fraudulently misrepresented zoning of property).

After reviewing the Pennsylvania cases on the fraud exception to the parol evidence rule in Betz, the Third Circuit decided that Bardwell and Berger could not be reconciled because their rationales were "fundamentally inconsistent."[10] Betz, 647 F.2d at 406. Betz, like Berger, concerned the sale of a building about whose floor the seller had allegedly made fraudulent

[10]The Pennsylvania Superior Court undertook a recent review of the law on this question in 1726 Cherry Street Partnership, 653 A.2d at 666-69.

misrepresentations. The contract for sale contained a standard integration clause. The Third Circuit predicted that if the Pennsylvania Supreme Court were to consider the case, it "would hold that evidence of fraud in the inducement is outside the parol evidence rule and, consequently, admissible." Id. at 408.

This Court is bound by Betz and therefore holds that Defendants' evidence of fraud in the inducement is admissible. Defendants have presented evidence of allegedly fraudulent misrepresentations made by Roemer to Housewright and to another chiropractor, George Pastor. The misrepresentations concerned the insurance reimbursements each could expect to receive for treatments with the VAX-D, and there is evidence that without such fraudulent assurances, neither man would have leased the VAX-D.[11]

Plaintiff contends that Defendants cannot prove fraud because they have not presented evidence supporting all of its elements, which are:

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[11]Plaintiff stresses that Housewright admits he failed to read the contract but it acknowledges, in effect, that such failure does not affect the fraud exception to the parol evidence rule when it states that, "in the absence of proof of fraud, failure to read a contract before signing is no defense to later avoid, modify or nullify the contract, regardless of the reasonableness or fairness of the contract." (Pl.'s Br. at 13, (citing, inter alia, Standard Venetian Blind Co. v. American Empire Insurance Co., 469 A.2d 563 (Pa. 1983)(emphasis added)).) Defendants claim proof of fraud.

> (1) a representation; (2) which is material to the transaction at hand; (3) made falsely, with knowledge of its falsity or recklessness as to whether it is true or false; (4) with the intent of misleading another into relying on it; (5) justifiable reliance on the misrepresentation; and (6) the resulting injury was proximately caused by the reliance.

Gibbs v. Earnst, et al., 647 A.2d 882, 889 (Pa. 1994). With respect to these elements, Plaintiff makes several arguments.

First, Plaintiff claims Defendants do not allege that Plaintiff made representations of any kind regarding insurance reimbursement. That is true, but Defendants claim that Roemer made such representations while acting as Plaintiff's apparent agent, at least for a short period of time. Whether they have any evidence to support such a claim is discussed below. Second, Plaintiff contends that the integration clause and the disclaimer of agency clause would preclude Defendants from claiming that statements made by third persons would be binding on CoreStates. That issue has already been discussed.

Third, Plaintiff states that because Defendants failed to bring in Lear or NSI as a third party defendant or to take the depositions of their representatives, Defendants cannot prove any of the essential elements. Defendants have presented evidence of the misrepresentations from persons to whom Roemer allegedly made them: Housewright and Pastor. In addition, Pastor's evidence tends to show that, because Roemer knew that Pastor had experienced exactly the same problems with insurance

reimbursement in the year before Housewright signed the lease agreement, Roemer either knew his representations to Housewright regarding reimbursement were false or acted with reckless disregard for the truth.

Fourth, Plaintiff claims that Defendants had an affirmative duty to contact at least some of the insurance companies to determine whether the treatments with the VAX-D would be covered. This goes to whether the reliance on the misrepresentation was justifiable. Much of the Pennsylvania case law on justifiable reliance comes from property cases. In determining whether reliance on a misrepresentation was justifiable in those cases, Pennsylvania courts have looked to whether the falsity of the statement was "readily ascertainable."[12]

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[12]See e.g. Berger v. Pittsburgh Auto Equipment Co., 127 A.2d 334 (Pa. 1956) (affirming order rescinding lease where fact that floor of premises would hold less than half the weight represented by landlord "could have been ascertained only by an expert engineer" and reviewing cases on subject); Myers v. McHenry, 580 A.2d 860 (Pa. Super. Ct. 1990) (holding insufficient water flow rate from well was not readily ascertainable and whether buyer's reliance on seller's fraudulent misrepresentation was justifiable was question for jury); LaDonne v. Kessler, 389 A.2d 1123 (Pa. Super. Ct. 1978) (holding failure to repair septic tank was not readily ascertainable, but water damage to cellar and sun deck were readily ascertainable); Glanski v. Ervine, 409 A.2d 425 (Pa. Super. Ct. 1979) (holding termite damage not "readily apparent" where debris and lighting conditions in seller prevented reasonable inspection and evidence of fraud sufficient); Silverman v. Bell Savings & Loan Ass'n, 533 A.2d 110, 115 (quoting Restatement and holding buyer justifiably relied on seller's fraudulent misrepresentations as to zoning of property and had no duty to check zoning himself prior to

This is in accord with the rules set out in the Restatement (Second) of Torts on justifiable reliance on fraudulent misrepresentation. The Pennsylvania Superior Court relies on those rules in Silverman v. Bell Savings & Loan Ass'n, 533 A.2d 110, 115 (Pa. Super. Ct. 1987).[13] Restatement (Second) of Torts §§ 540, 541 (1977). Section 540, entitled "Duty to Investigate," states, "The recipient of a fraudulent misrepresentation of fact is justified in relying upon its truth, although he might have ascertained the falsity of the representation had he made an investigation." Id. § 540. However, there are limits to the application of this rule. Section 541, entitled "Representation Known to Be or Obviously False" states, "The recipient of a fraudulent misrepresentation is not justified in relying upon its truth if he knows that it is false or its falsity is obvious to him." Id. § 541. The comment to section 451 states that the recipient of misrepresentation is "required to use his senses and cannot recover if he blindly relies upon a misrepresentation the falsity of which would be

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purchase); but see Bowman v. Meadow Ridge, Inc., 615 A.2d 755,759 (Pa. Super. Ct. 1992) (buyer did not justifiably rely on seller's misrepresentation of prices for which other homes had sold when all seller needed to do was check the public record).

[13]In Betz, the Third Circuit noted that it often resorted to the Restatements in interpreting Pennsylvania law because of the Pennsylvania courts' frequent reliance on them. Betz, 647 F.2d at 407.

patent to him if he had utilized his opportunity to make a cursory examination or investigation." Id. cmt a.

Plaintiff has presented no evidence that a cursory investigation would have yielded the information Housewright needed, yet it asks me to conclude, as a matter of law, that Defendants' reliance on Roemer's assurances was unjustifiable. Defendants, for their part, have demonstrated that it took both Housewright and Pastor months to determine that none of the billing codes that had been provided to them would allow them to receive reimbursement. In light of this evidence, I cannot conclude as a matter of law that Housewright could readily have ascertained the fact that none of the insurers would reimburse him for his use of the VAX-D and that his reliance on the misrepresentations was unjustifiable. Furthermore, the question whether a party's reliance on another's fraudulent misrepresentation is justifiable "should be decided by a jury on the basis of all of the facts and permissible inferences which may be drawn from the evidence presented at trial." Myers v. McHenry, 580 A.2d 860, 865 (Pa. Super. Ct. 1990).

C. Holder in Due Course and Apparent Agency

At this point, the Court has concluded that Defendants' have presented sufficient evidence of fraud in the inducement to let a case go forward against Roemer and Lear, but that is not at

issue here. The question here is whether Roemer's and Lear's conduct can be attributed to Plaintiff. Plaintiff's position is that, because it is a holder in due course, Housewright is bound by the lease regardless of the actions of the former lease holder or its agent. The lease agreement specifies that Pennsylvania law applies to this diversity case, and under Pennsylvania law, a holder in due course is a holder who takes the instrument:

> (I) for value;
> (ii) in good faith;
> (iii) without notice that it is overdue or has been dishonored . . . ; [and]
> . . .
> (vi) without notice that any party has a defense or claim [against it].

13 Pa.S.C.A. §3302(a) (West Supp. 1997). Plaintiff states that Defendants were notified in writing of the assignment, acknowledged the notice, but "failed to notify CoreStates in writing of any defense to the lease agreement." (Pl.'s Br. at 6.) It further states that, in order to have notice, Defendants must prove that CoreStates had actual knowledge of their defense or that, "from all of the facts and circumstances known by CoreStates at the time of the Assignment, CoreStates had reason to know that the defense existed." (Id., (citing State Street Bank & Trust Co. v. Strawser, 908 F. Supp. 249, 253 (M.D. Pa. 1995)).)

Defendants contend that Roemer fraudulently induced Housewright to enter the lease by claiming that Housewright could

receive insurance reimbursement for treating patients with the VAX-D table. They further contend that Roemer acted as Plaintiff's agent, at least after December 13, 1995, when Plaintiff faxed Housewright a letter stating it had taken assignment of Housewright's lease two days before the lease was signed.[14] Housewright states that, during those two days, Roemer continued to assure him that he would receive insurance reimbursement. If it is true that Roemer, acting as Plaintiff's agent, fraudulently induced Housewright to enter into the lease, then knowledge of Roemer's fraud and therefore of Defendants' defense of fraud in the inducement may be attributable to Plaintiff, thereby preventing it from being a holder in due course.

Defendants do not claim that Roemer had actual authority to make representations on behalf of Plaintiff; however, an apparent agency relationship can have the same effect as an actual one. The question is whether Roemer had apparent authority to act for Plaintiff in making representations to Defendants. The United States Court of Appeals for the Third Circuit ("Third Circuit") has stated:

> Under the decisional law of Pennsylvania, "apparent authority" is the power to bind a principal in the absence of actual authorization from the principal, but

[14]Defendants also claim that Dr. David Singer made similar misrepresentations, but they do not claim that he was acting as Plaintiff's agent. (RH Ans. ¶ 21.)

> under circumstances in which the principal leads persons with whom his agent deals to believe that the agent has authority. The test for determining whether an agent possesses apparent authority is whether a man of ordinary prudence, diligence and discretion would have a right to believe and would actually believe that the agent possessed the authority he purported to exercise.

United Computer Systems, Inc. v. Medical Services Ass'n. of Pa., 628 F.2d 820, 823 (3d Cir. 1980) (citations and internal quotations omitted). Thus, "[a]pparent authority can exist only to the extent that it is reasonable for the third party dealing with the agent to believe the agent is authorized." D&G Equipment Co., Inc. v. First National Bank of Greencastle, Pa., 764 F.2d 950, 954 (3d Cir. 1985). "[A]pparent authority flows from the conduct of the principal and not from that of the agent." Id. The third party cannot rely solely on the representations of the apparent agent that he is acting for the principal. Id.

The only evidence Defendants present that Plaintiff acted so as to cause a reasonable person to believe that Roemer was acting as Plaintiff's apparent agent is Plaintiff's letter of December 13, 1995, to Housewright informing him that it had taken assignment of the lease. Housewright received the letter two days before the execution of the lease. Plaintiff states that it had no agents, but Defendants contend that, during those two days, Roemer, acting as Plaintiff's apparent agent, continued to make false representations to Housewright as to the insurance

reimbursements. Defendants' position is that there are genuine issues of material fact as to whether Plaintiff's action in faxing the letter to Housewright on December 13 would have caused a reasonable person to believe that, at least thereafter, Roemer was acting for Plaintiff.[15]

The December 13 letter notified Housewright that Plaintiff had taken assignment of "all Lessor's right, title and interest in the Lease, but none of Lessor's obligations with respect thereto." ((Pl.'s Mot. Summ. J. Ex. E.) In addition, the letter stated, "We are not responsible for performance of any of

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[15]Plaintiff further contends that all agency relationships are specifically disclaimed in the lease agreement. It quotes Paragraph 3 of the agreement, which states:

> Lessee understands and agrees that neither the Supplier, nor any salesman or other agent of the Supplier, is an agent of Lessor, no salesman or agent of Supplier is authorized to waive or alter any item or condition of this lease, and no representation as to the equipment or any other matter by the Supplier shall in any way affect Lessee's duty to pay the rent and perform any other obligations as set forth in this lease.

(Pl.'s Mem. Ex. A2 ("Lease") ¶ 3.) In this paragraph, the lessor does not disclaim all agency relationships; it disclaims only those representations made by the supplier or the supplier's agents. The lease specified that the lessor was to purchase the equipment from a supplier, but the lessor was unwilling to guarantee the equipment as to its design, condition, fitness for intended use, or in any way. (Lease ¶ 2.) To that end, the lessor specifically disclaimed responsibility for any representations the supplier and its agents might make. No one claims that Roemer was the agent of the supplier; therefore paragraph 3 of the lease, quoted above, does not disclaim Roemer's representations.

the duties of Lessor or any other person under the Lease." (Id.) It also stated:

> Rent due under the Lease is payable to us absolutely and unconditionally and shall not be subject to any abatement, reduction, set-off or counterclaim for any reason whatsoever and such payments shall continue to be payable in all events. You will not assert against us any right of rejection, defense, set-off, counterclaim, affirmative claim or the like you may now or in the future [have] against Lessor or any other person.

(Id.) The letter thus made clear that Plaintiff and the lessor were separate entities.

Housewright claims he was confused as to whom Roemer represented and was unclear about whether Lear and Plaintiff were the same entity, but Defendants have presented no evidence that any such confusion was due to Plaintiff's representations. The fact that assignment seemed to occur before the lease was signed may have been puzzling, but it is insufficient, as a matter of law, to cause a reasonable person to believe Roemer was Plaintiff's agent or that Plaintiff and Lear were somehow the same. The Court therefore concludes that the December 13 letter fails to create a genuine issue of material fact as to whether Roemer was Plaintiff's agent and, therefore, as to whether Plaintiff was a holder in due course.[16]

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[16]Defendants also suggest that Plaintiff had notice of their defense of fraud in the inducement because other chiropractors whose leases had previously been assigned to Plaintiff had defaulted on their payments because of Roemer's fraudulent misrepresentations. Plaintiff's Vice-President testified that

III. CONCLUSION

For reasons that appear above, this Court concludes that, while there are genuine questions of material fact as to whether there was fraud in the inducement to enter the lease, Defendants' evidence does not support the attribution of any such fraud to Plaintiff, nor does it support the attribution of knowledge of such fraud so as to constitute a defense to Plaintiff's claimed status as holder in due course. Therefore, there is no genuine issue of material fact as to whether Plaintiff was a holder in due course. Summary judgment in favor of Plaintiff must therefore be granted.

An appropriate Order follows.

Plaintiff had taken assignment of 75 to 100 leases for VAX-Ds. Defendants were only able to show that one of the lessees, George Pastor, defaulted because he had relied on Roemer's misrepresentations concerning insurance reimbursement. (Pl.'s Mot. Summ. J. Ex. B., Souder Certificate.)

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CORESTATES LEASING INC. f/k/a MERIDIAN LEASING INC., Plaintiff,	:	CIVIL ACTION
v.	:	
RICK K. HOUSEWRIGHT, D.C., ind. & d/b/a LONE STAR CHIROPRACTIC CLINIC, and LORI HOUSEWRIGHT, Defendants.	:	No. 96-8678

O R D E R

AND NOW, this 30th day of March, 1998, upon consideration of Plaintiff's Motion for Summary Judgment (Doc. No. 12), Defendants' Response (Doc. No. 14), and all the exhibits and additional submissions thereto, **IT IS HEREBY ORDERED** that:

1. Said Motion is **GRANTED;**

2. Judgment is entered in favor of Plaintiff and against Defendants in the amount of $171,697.22; and

3. All remaining outstanding Motions are **DENIED AS MOOT.**

BY THE COURT

John R. Padova, J.